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17 Attorneys for Plaintiff LUCIO SANCHEZ and others similarly situated

## UNITED STATES DISTRICT COURT

### NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

17 LUCIO SANCHEZ, an individual, on behalf  
 18 of himself and others similarly situated,

19 Plaintiff,

20 vs.

21 AM RETAIL GROUP, INC., a Delaware  
 22 Corporation; and DOES 1 through 10,  
 23 inclusive,

24 Defendants.

25 Case No.: 3:18-cv-00287-JCS

26 CLASS ACTION

27 Assigned For All Purposes To:

28 Hon. Joseph C. Spero, Courtroom G, 15<sup>th</sup> Floor

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF THIRD AMENDED JOINT STIPULATION OF SETTLEMENT OF CLASS AND COLLECTIVE ACTION CLAIMS, AND JUDGMENT**

*[Filed concurrently with Notice of Motion and Motion for Final Approval and Memorandum; and Supporting Declarations of David Yeremian, Alvin B. Lindsay, and Jennifer Mills]*

*Following Final Approval Hearing on:*

29 Date: May 29, 2020

30 Time: 9:30 a.m.

31 Location: Courtroom G, 15<sup>th</sup> Floor

32 Original Complaint filed: December 15, 2017  
 33 First Amended Complaint: January 31, 2018  
 34 Second Amended Complaint: April 30, 2018  
 35 Date of Removal: January 12, 2018

## **ORDER AND JUDGMENT**

This matter came before the Court on the unopposed motion by Plaintiff LUCIO SANCHEZ (“Plaintiff”), on behalf of himself and the preliminarily approved Class and Collective of similarly situated employees of Defendant AM RETAIL GROUP, INC. (“Defendant”), for final approval of the parties’ Third Amended Joint Stipulation of Settlement of Class and Collective Claims (“Settlement” or “Settlement Agreement”) pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

8 The Motion for Final Approval followed and was concurrently heard with Plaintiff's  
9 Unopposed Motion for Attorneys' Fees and Costs and Class Representative Enhancement at Final  
10 Approval ("Fees and Costs Motion") (ECF No. 60), and as addressed in the parties' Settlement  
11 Agreement. A copy of the Settlement Agreement, which the Court preliminarily approved, was  
12 provided at ECF No. 56-2, and has also been provided at Exhibit A to Class Counsel David  
13 Yeremian's Declaration in support of final approval.

14 This Motion follows the Court’s Order granting preliminary approval to the Settlement,  
15 entered on **December 23, 2019**. (ECF No. 59). On **February 18, 2020**, the Administrator (Rust  
16 Consulting, Inc.) mailed the California Class Notice to 2,881 California Class Members and the  
17 FLSA Collective Notice to 3,370 FLSA Collective Members. (*See* Declaration of Jennifer Mills in  
18 support of Final Approval (“Mills Decl.”), ¶ 7). A copy of the California Class Notice and the  
19 FLSA Collective Notice, as mailed, are respectively provided at Exhibits A and B to the Mills  
20 Declaration. (*See also* ECF Nos. 56-3, 58-1). The Notices informed Class and Collective Members  
21 of the terms of the Settlement, the right to participate in the Settlement, the right to object to the  
22 Settlement, the right to request exclusion and pursue their own remedies, and the right to appear in  
23 person or by counsel at the final approval hearing regarding final approval of the Settlement.

24 The motion for final approval seeks final approval of the Settlement and entry of judgment  
25 that will bind each Settlement Class and Collective Member and will operate as a full release and  
26 discharge of the Released Claims as of the effective date (and as defined and detailed in the  
27 Settlement Agreement). The Court approved the definition of the Released Parties and the  
28 California Settlement Class Members' Released Claims and FLSA Settlement Collective

1 Members' Released Claims, as articulated in the Settlement Agreement, and did so because the  
 2 release language makes it clear that the Class members are only releasing claims based on the  
 3 identical factual predicate of the operative Complaint. The proposed Notices make this clear as  
 4 well. The release period covered by the FLSA Settlement Collective Members' Released Claims  
 5 runs through the date they cash the checks for their Individual Collective Action Settlement  
 6 Payments, if they chose to do so, and their individual releases are effective on that date. The FLSA  
 7 Collective Members who do not cash their Individual Collective Action Settlement Payment  
 8 checks are not opting into the FLSA Collective and will not release their claims under the FLSA.

9 Having received and considered Plaintiff's motion for final approval of the Settlement,  
 10 Plaintiff's motion for attorneys' fees, costs and Class Representative Enhancement Award, the file  
 11 in this case, and the evidence and argument received by the Court before entering the Preliminary  
 12 Approval Order and before and in connection with the final approval hearing, **THE COURT**  
 13 **HEREBY ORDERS, ADJUDGES AND DECREES THAT:**

14 1. The terms in this Order shall have the same meaning as assigned to them in the  
 15 Settlement Agreement.

16 2. The Settlement Administrator (Rust Consulting, Inc.) has fulfilled its initial notice  
 17 and reporting duties under the Settlement Agreement.

18 3. The Court finally approves and conditionally certifies for settlement purposes only  
 19 and pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the "California  
 20 Settlement Class Members" defined as "all individuals employed by Defendant at any time from  
 21 October 6, 2015 through January 31, 2019 and who have been employed by Defendant as  
 22 nonexempt hourly retail store employees within the state of California."

23 4. The Court further finally approves and conditionally certifies, for Settlement  
 24 purposes only, the "FLSA Settlement Collective Members" defined as "all current and former  
 25 hourly, non-exempt retail store employees who worked for Defendant at any time during the  
 26 period of December 15, 2014 through January 31, 2019 and who worked overtime and received  
 27 bonuses and/or incentive pay in the same pay period." The "FLSA Settlement Collective  
 28 Members" are those who affirmatively opt into the Settlement by cashing the checks for their

1 Individual Collective Action Settlement Payments, which will include language acknowledging  
2 they are opting into the FLSA Collective. The relevant time period of December 15, 2014 through  
3 January 31, 2019 applies to all the FLSA Collective Members including any who are also  
4 members of the California Settlement Class, but the release of the FLSA claims runs through the  
5 date when checks are cashed.

6       5. The California Class Notice and the FLSA Collective Notice, at Exhibits A and B  
7 to the Mills Declaration (“the Notices”), as well as the procedure set forth in the Settlement  
8 Agreement for providing the Notices to the California Class Members and the FLSA Collective  
9 Members by U.S. First-Class Mail, (i) was the best practicable notice under the facts and  
10 circumstances of this case; (ii) was reasonably calculated to apprise Class and Collective Members  
11 of the pendency of the Action, their right to participate in the Settlement, their right to exclude  
12 themselves from the Settlement, and their right to object to, and/or appear at the Final Approval  
13 Hearing for, the Settlement; and (iii) constituted due, adequate, and sufficient notice of a class  
14 settlement under Federal Rule of Civil Procedure 23, due process, and any other applicable rules  
15 or law.

16       6. There were no objectors to the Settlement Agreement, and no requests for  
17 exclusion. As there were no objectors, the effective date of the Settlement is as of entry of this  
18 Order and Judgment. Therefore, under the scheduled set forth in the Settlement, the Administrator  
19 will mail individual settlement payment checks to 2,881 California Class Members and 3,370  
20 FLSA Collective Members, who will be paid the Net Distribution Fund without reversion to  
21 Defendant. (Mills Decl., ¶¶ 13-15). The Court has approved the methods for calculating Individual  
22 Settlement Payments to the California Settlement Class Members and the FLSA Settlement  
23 Collective Members, as detailed in the Settlement Agreement.

24       7. The notice of settlement served by Plaintiff on the California Labor and Workforce  
25 Development Agency (“LWDA”) satisfied the requirements of the PAGA. The LWDA has  
26 expressed no objection to the Settlement.  
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1       8.     The terms of the Settlement are fair, reasonable and adequate, and the standards  
 2 and applicable requirements for final approval of this class action settlement are satisfied,  
 3 including the provisions of Rule 23 of the Federal Rules of Civil Procedure.

4       9.     The Settlement has been reached as a result of intensive, serious, and non-collusive,  
 5 arms-length negotiations and was achieved with the aid of an experienced mediator over multiple  
 6 sessions. The Settlement was entered into in good faith as to each Settlement Class and Collective  
 7 Member.

8       10.    Class Counsel are experienced class action litigators and have expressed the view  
 9 that the Settlement is fair, reasonable and adequate.

10      11.    Taking into consideration: the nature of the Plaintiff's claims; the nature of  
 11 Defendant's defenses; the expense, complexity and likely duration of further litigation; and the  
 12 risk of attaining and maintaining class action status throughout the litigation, the amounts paid  
 13 under the Settlement are fair and reasonable. Moreover, the allocation of settlement proceeds  
 14 among the Settlement Class and Collective Members is fair, adequate and reasonable. The fact that  
 15 a settlement represents a compromise of the Parties' respective positions rather than the result of a  
 16 finding of liability at trial also supports the Court's decision granting final approval.

17      12.    The Court appoints Plaintiff Lucio Sanchez to represent the California Class  
 18 Members and the FLSA Collective Members for the purpose of entering into and implementing  
 19 the Settlement.

20      13.    The Court appoints David Yeremian and Alvin B. Lindsay and David Yeremian &  
 21 Associates, Inc., and Emil Davtyan and Davtyan Law Firm, as counsel for the California Class  
 22 Members and the FLSA Collective Members for the purpose of entering into and implementing  
 23 the Settlement.

24      14.    The Settlement Administrator, Rust Consulting, Inc., is to execute the distribution  
 25 of proceeds pursuant to the terms of this Settlement. Pursuant to the Settlement Agreement, and as  
 26 of the effective date and under the schedule provided in the Settlement Agreement, Defendant will  
 27 provide the Settlement Administrator with the Total Settlement Amount of \$1.3 million, which  
 28 will be distributed in accordance with the Settlement Agreement.

1        15. As of the Effective Date, the Plaintiff and the Settlement Class Members will  
 2 release Defendant and the Released Parties from the Released Claims, as those terms are defined  
 3 in the Settlement Agreement. More specifically, as of the Effective Date, the California Settlement  
 4 Class Members shall be permanently barred and enjoined, by operation of the entered Final  
 5 Judgment, from initiating, asserting, or prosecuting against the Released Parties in any federal or  
 6 state court or tribunal any and all claims released under the Settlement. The FLSA Settlement  
 7 Collective Members will be permanently barred and enjoined from initiating, asserting, or  
 8 prosecuting against the Released Parties in any federal or state court or tribunal the FLSA  
 9 Settlement Collective Members' Released Claims effective as of the date if and when he or she  
 10 opts-into the FLSA Settlement Collective by executing and cashing the checks for their Individual  
 11 Collective Action Settlement Payments.

12        16. The PAGA Payment arising under the California Private Attorneys General Act of  
 13 \$25,000.00 is approved, with the LWDA receiving \$18,750.00 and the remaining \$6,250.00 being  
 14 redistributed to the California Settlement Class members. Payment of that amount shall be paid  
 15 from the Total Settlement Fund in accordance with the Settlement Agreement, and there shall be no  
 16 further recourse for the civil penalties released under the terms of the Settlement.

17        17. The California Settlement Class Members are bound by the Settlement and release  
 18 of the PAGA Claims or remedies under this Judgment pursuant to *Arias v. Superior Court*, 46 Cal.  
 19 4th 969 (2009). The State of California's claims for civil penalties pursuant to PAGA are also  
 20 extinguished.

21        18. The fees, expenses, and any other costs of Rust Consulting, Inc. in administering  
 22 the Settlement, in the amount of \$65,000.00, are fair and reasonable. Payment of that amount shall  
 23 be paid out of the Total Settlement Amount in accordance with the Settlement Agreement, which  
 24 shall fully, finally and completely compensate Rust Consulting, Inc. for all fees, expenses and any  
 25 other costs in administering the Settlement.

26        19. Based upon application by Class Counsel and Plaintiff, and his valuable  
 27 contribution to this litigation, the Court approves the payment of a Class Representative  
 28 Enhancement and Service Award in the amount of \$5,000.00 to Plaintiff (in addition to any

1 recovery he may receive as a member of the California Settlement Class and the FLSA Settlement  
 2 Collective) in recognition of his efforts and the risks he undertook in prosecuting this Action.

3       20. Based upon application by Class Counsel, the Court approves the payment of  
 4 attorneys' fees to Class Counsel in the amount of \$433,333.33, which is one-third of the Total  
 5 Settlement Fund of \$1.3 million to be paid in the manner set forth in the Settlement Agreement.  
 6 Plaintiff's request for an award of reasonable litigation costs is also approved. Out of the \$15,000  
 7 allocated to costs, Class Counsel has incurred \$14,093.26 in costs through final approval. Class  
 8 Counsel is awarded this amount, and the difference between that number and the allocated amount  
 9 will be added back into the Net Distribution Fund to be distributed to the Settlement Class and  
 10 Collective Members in accordance with the Settlement Agreement.

11       21. The Settlement Agreement and this Final Approval Order and Judgment shall have  
*res judicata* and preclusive effect in all pending and future lawsuits or other proceedings that  
 12 encompass any of Plaintiff's claims and the Released Claims released by the Settlement Class and  
 13 Collective Members. The Settlement Agreement and this Final Approval Order and Judgment  
 14 shall be binding on Plaintiff and the Settlement Class and Collective Members and others acting  
 15 on their behalf.

16       22. Plaintiff and the Settlement Class Members are permanently barred from filing,  
 17 commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any  
 18 other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction  
 19 based on the claims released in the Settlement Agreement.

20       23. The Settlement provided for herein, and any proceedings undertaken pursuant  
 thereto, may not be offered, received, or construed as evidence of: a presumption, concession, or  
 21 an admission by any Party of liability or non-liability; the certifiability or non-certifiability the  
 22 class and collective claims resolved by the Settlement; the manageability or non-manageability of  
 23 the PAGA representative claims resolved by the Settlement; provided, however, that reference  
 24 may be made to this Settlement in such proceedings as may be necessary to effectuate the  
 25 provisions of this Settlement.

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1       24. This Final Approval Order and Judgment of dismissal shall be entered forthwith,  
2 dismissing this Action with prejudice.

3       25. Without affecting the finality of the Final Approval Order and Judgment, the Court  
4 retains continuing jurisdiction over Plaintiff, Defendant, and the Settlement Class and Collective  
5 Members as to all matters concerning the administration, consummation, and enforcement of this  
6 Settlement Agreement.

7       26. After settlement administration and distribution of funds have been completed, the  
8 Parties shall file a report with this Court certifying compliance with the terms of the Settlement  
9 and this Order and Judgment and the Procedural Guidance for Class Action Settlements for the  
10 Northern District of California.

11 **IT IS SO ORDERED**

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13 DATED: June 1, 2020



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Honorable Joseph C. Spero  
Chief Magistrate Judge

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